

HOUSE No. 1176

By Mr. Larkin of Pittsfield, petition of Peter J. Larkin and others relative to alternative educational services for students suspended from school. Education.

The Commonwealth of Massachusetts

PETITION OF:

Peter J. Larkin	Mary E. Grant
Patricia D. Jehlen	Joyce A. Spiliotis
Steven A. Tolman	

In the Year Two Thousand and Five.

AN ACT RELATIVE TO ENSURING THAT ALL STUDENTS HAVE ACCESS TO
EDUCATIONAL OPPORTUNITIES AND QUALITY LEARNING TIME.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 2 of Chapter 70 of the General Laws, as
2 appearing in the 2000 Official Edition, is hereby amended by
3 inserting after the word “October”, in line 223, the following sen-
4 tences:— “No student expelled by a school district shall be
5 included in the department’s calculation of the said district’s foun-
6 dation budget, unless the student is provided with alternative edu-
7 cation as determined by the department. The department shall
8 adjust the district’s October first enrollment report upon notifica-
9 tion of the district that a student has been expelled.

1 SECTION 2. Said section 2 of said chapter 70, as so appearing,
2 is hereby further amended by inserting after the word “tuition”, in
3 line 527, the following sentence:— “Any state aid for students
4 who have been placed in alternative education programs shall
5 follow the student.”

1 SECTION 3. Section 37H of Chapter 71 of the General Laws,
2 as appearing in the 2000 Official Edition, is hereby amended by

3 striking out lines 45 through 47, and inserting in place thereof the
4 following paragraphs:—

5 After said hearing, a principal may, in his discretion, decide to
6 suspend rather than expel a student who has been determined by
7 the principal to have violated either paragraph (a) or (b); provided,
8 however, that the principal shall expel for not less than one year
9 any student who is determined to have brought a firearm, as that
10 term is defined in section 921 of Title 18 of the United States
11 Code, onto school premises or to a school-sponsored or school-
12 related event, including athletic games; provided further, that the
13 superintendent may modify the decision to expel students on a
14 case by case basis under subsection (d) of this section.

15 Nothing in this section shall preclude a school or school district
16 from providing educational services to a student who has been
17 expelled from school.

1 SECTION 4. Said section 37H of chapter 71, as so appearing,
2 is hereby further amended by inserting, in line 57, after the word
3 “required” the following:— “during the term of said expulsion”.

1 SECTION 5. Said section 37H of chapter 71, as so appearing,
2 is hereby further amended by adding at the end thereof the
3 following clause:—

4 (f) The superintendent shall conduct a review of the case of any
5 student expelled under this section not later than two months after
6 the date of expulsion for any student who is not in an alternative
7 education program, or not later than six months after the date of
8 expulsion for any student who is in an alternative education pro-
9 gram, for the purpose of determining whether the student should
10 be re-admitted to school. The superintendent shall consult with the
11 principal concerning the student’s readmittance and shall accept
12 and consider written reports and any testimony submitted by the
13 student or student’s parents relevant to the question of whether the
14 student should be re-admitted. The student or the student’s parents
15 or legal guardian may be represented by counsel or by any person
16 they designate to speak on their behalf. The student may be re-
17 admitted if the student can demonstrate to the satisfaction of the
18 superintendent the following: (1) that the student’s presence in
19 school will not pose a physical danger to himself, or others, and

20 (2) that the student has addressed satisfactorily the behavior that
21 led to the expulsion.

22 If, following a review hearing, the superintendent does not re-
23 admit the student, further review hearings to consider the stu-
24 dent's re-admittance shall be convened by the superintendent
25 every two months following the first review hearing for students
26 not in an alternative education program, or every six months
27 following the first review hearing for any student in an alternative
28 education program, until the student turns eighteen years of age.

29 Within ten school days, the superintendent shall notify in
30 writing the student and the student's parents of the decision as to
31 the student's attendance status within the school system. If the
32 superintendent determines that the expulsion shall remain in
33 effect, the letter shall state to the student the conditions under
34 which a student can obtain readmittance to school, the date of the
35 next review hearing, and any alternative education options that
36 exist for the student.

37 The superintendent shall notify the commissioner of any stu-
38 dent suspended or expelled from school and shall report to the
39 commissioner the opportunities for alternative education provided
40 to the student. The commissioner shall file a report on an annual
41 basis with the joint committee on education, arts and humanities
42 concerning the number of suspensions and expulsions in the
43 public schools, the alternative education options provided to stu-
44 dents and the number of students re-admitted under the provisions
45 of this section.

1 SECTION 6. Said section 37H of chapter 71, as so appearing,
2 is hereby further amended by adding at the end thereof the
3 following new paragraph:— "For the purpose of this section, the
4 term "gun" means a firearm as such term is defined in section 921
5 of Title 18 of the United States Code. The term "knife" means that
6 referenced in sub-paragraph (b) of section 10 of chapter 269 of the
7 General Laws. The term "expulsion" shall mean any disciplinary
8 action taken under the authority of the school committee, superin-
9 tendent or principal to prohibit a student from attending classes
10 the student would have attended but for the disciplinary action for
11 more than 10 consecutive school days or 30 cumulative school
12 days in a school year. The term "suspension" shall mean any dis-

13 ciplinary action taken under the authority of the school committee,
14 superintendent or principal to prohibit a student from attending
15 classes the student would have attended but for the disciplinary
16 action for up to 10 consecutive school days or 30 cumulative
17 school days in a school year.”

1 SECTION 7. Section 37H1/2 of Chapter 71 of the General
2 Laws, as appearing in the 2000 Official Edition, is hereby
3 amended by inserting after the word “student.”, in line 56, the
4 following: — “during the term of said expulsion.”

1 SECTION 8. Section 1 of Chapter 71B of the General Laws, as
2 appearing in the 2000 Official Edition, is hereby amended by
3 inserting after the words “chapter 69”, in lines 43 through 44, and
4 67, the following:— “; provided further, that no child shall be
5 determined to be a school age child with a disability solely
6 because the child has been suspended or expelled from a public or
7 private school.”

1 SECTION 9. Section 1 of chapter 76 of the General Laws, as
2 appearing in the 2000 Official Edition, is hereby amended by
3 striking out the first sentence and inserting in place thereof the
4 following:—

5 Every child from the age of 6 to the age of 18, or until gradua-
6 tion from high school, whichever occurs first, shall attend a public
7 day school in said town, or some other day school approved by the
8 school committee, during the number of days required by the
9 board of education in each school year, unless the child attends a
10 school in another town, for said number of days, under sections
11 six to twelve, inclusive, or attends an experimental school project
12 established under an experimental school plan, as provided in
13 section one G of chapter fifteen, but such attendance shall not be
14 required of a child whose physical or mental condition is such as
15 to render attendance inexpedient or impracticable subject to the
16 provisions of section three of chapter seventy-one B, or of a child
17 granted an employment permit by the superintendent of schools,
18 under section eighty-six of chapter one hundred and forty-nine,
19 when such superintendent determines that the welfare of such
20 child will be better served through granting of such permit, or a

21 child who is being otherwise instructed in a manner approved in
22 advance by the superintendent or school committee.

1 SECTION 10. Said chapter 76, as so appearing, is hereby
2 amended by inserting after section 17 the following section:—

3 Section 17A. Notwithstanding any general or special law to the
4 contrary, any student under the age of twelve may not be expelled
5 from school unless the school district first proves by clear and
6 convincing evidence to a court of competent jurisdiction that the
7 student is a physical danger to himself, or, others and the district
8 receives the permission of the court to expel the student. Any stu-
9 dent expelled from school under this section shall retain the rights
10 of appeal and review as set forth in section thirty-seven H of
11 chapter seventy-one of the General Laws.

1 SECTION 11. Chapter 149 of the General Laws, as appearing
2 in the 2000 Official Edition, is hereby amended by striking out
3 section 65 and inserting in place thereof the following section:—

4 Section 65. No person shall employ a minor under age 16 or
5 permit such minor to work in any occupation for more than 18
6 hours in any one week when school is in session, or more than 32
7 hours in any one week when school is not in session, or more than
8 eight hours in any non-school day, or more than three hours in any
9 one day when school is in session, or before 7:00 a.m. or after
10 7:00 p.m., except as provided in section 69, and except that
11 evening hours shall be extended until 9:00 p.m. from June 15
12 through Labor Day, as long as school has recessed.

1 SECTION 12. Said chapter 149, as so appearing, is hereby
2 amended by striking out section 66 and inserting in place thereof
3 the following section:—

4 Section 66. No person shall employ a minor under age 18, or
5 otherwise permit such minor, to work in any occupation before
6 6:00 a.m. or after 10:00 p.m.; provided however, that minors may
7 be employed in educational, vocational or cooperative health care
8 programs until, but not after, 11:00 p.m.; and provided further,
9 that minors under age 18 may be employed until 11:00 p.m. on
10 days not immediately followed by a school day. No employer may
11 require any full-time secondary school student who has reached

12 the age of majority to work later than the hours set forth herein
13 without a written waiver signed by the student and the superinten-
14 dent or designated official of the school the student is attending.
15 Any minor under the age of 18 who is employed after 8:00 p.m.
16 must be under direct and immediate adult supervision.

1 SECTION 13. Said chapter 149, as so appearing, is hereby
2 amended by adding in section 67 the following paragraph:—
3 Notwithstanding the foregoing, no person shall employ or oth-
4 erwise permit a minor under age 18 who is a full-time secondary
5 school student to work more than 28 hours in any one week when
6 school is in session, or more than 48 hours in any one week when
7 school is not in session, or more than eight hours in any non-
8 school day or more than four hours in any day when school is in
9 session. No employer may require any full-time secondary school
10 student who has reached the age of majority to work more hours
11 than those set forth herein without the prior written consent of
12 said student and the superintendent or designated official of the
13 school said student is attending. Notwithstanding these provisions,
14 nothing in this paragraph will affect the number of hours a student
15 participates in a work experience that is approved by the superin-
16 tendent or designated school official and is part of an approved
17 education plan within a cooperative program or school-to-work
18 program and counted as learning time under Student Learning
19 Time Regulations, 603 CMR 27.00.

1 SECTION 14. Said chapter 149, as so appearing, is hereby
2 amended by striking out section 78 and inserting in place thereof
3 the following section:—
4 Section 78. Whoever, by himself or for others, or through
5 agents, servants or foremen, employs, induces or permits any
6 minor to work contrary to any provision of sections 60 to 74
7 inclusive, shall be punished for a first offense by a fine of not less
8 than 500 nor more than 2,000 dollars or by imprisonment for not
9 more than two months, or both, and for a subsequent offense by a
10 fine of not less than 2,000 nor more than 10,000 dollars or by
11 imprisonment for not more than six months, or both. The employ-
12 ment of any minor in violation of any provision of said sections,
13 after the person employing such minor has been notified thereof in

14 writing by any authorized inspector or supervisor of attendance,
15 shall constitute a separate offense for every day during which the
16 employment continues. Any employer who is convicted of will-
17 fully violating any provisions of this law shall, in addition to any
18 criminal penalty imposed, be prohibited from contracting, either
19 directly or indirectly with the commonwealth or any of its agen-
20 cies or political subdivisions for a period of one year from the
21 date of such ruling and such employer shall also be prohibited
22 from employing minors for a period of five years. Violations of
23 sections 60 to 74 inclusive or section 104 shall be reported to the
24 department of industrial accidents.

25 As an alternative to initiating criminal proceedings as set forth
26 in the first paragraph hereof or in any other provision of this
27 chapter pertaining to the employment of minors for which a crim-
28 inal penalty is provided, the attorney general's office may issue a
29 written warning or a civil citation. A separate citation may be
30 issued requiring payment of a civil penalty of not more than 5,000
31 dollars for each violation to be paid to the commonwealth within
32 21 days of the date of issuance of such citation. Notwithstanding
33 the foregoing, if a lower maximum criminal fine amount is set
34 forth in another provision of this chapter for violation of which a
35 civil citation is issued, the civil penalty that may be assessed
36 under said civil citation shall not exceed the maximum criminal
37 fine amount authorized to be assessed under such provision.

38 Any person aggrieved by any citation issued pursuant to this
39 section may appeal said citation by filing a notice of appeal with
40 the attorney general and the division of administrative law appeals
41 within 15 days of the receipt of the citation. Any such appellant
42 shall be granted a hearing before a representative of the division
43 of administrative law appeals in accordance with chapter 30A.
44 The hearing officer may affirm, vacate, or modify any penalty
45 provided for by the citation. Any person aggrieved by any deci-
46 sion of the hearing officer following such hearing may file an
47 appeal in the superior court pursuant to the provisions of said
48 chapter 30A.

49 If any person shall fail to comply with the requirements set
50 forth in any citation issued by the attorney general's office, or
51 shall fail to pay any civil penalty imposed thereby within 21 days
52 of the date of issuance of such citation or within 30 days

53 following a decision of the hearing officer if such citation has
54 been appealed, excluding any time during which judicial review
55 of the hearing officer's decision remains pending, the attorney
56 general may apply for a criminal complaint for the violation of the
57 appropriate section of this chapter.

58 Notwithstanding the provisions of the preceding paragraph, if
59 any civil penalty imposed by citation issued by the attorney gener-
60 al's office remains unpaid beyond the time period specified for
61 payment in said preceding paragraph, such penalty amount,
62 together with interest thereon at the rate of 18 per cent per annum,
63 shall be a lien upon the real estate and personal property of the
64 person who has failed to pay such penalty and interest. Such lien
65 shall take effect by operation of law on the day immediately
66 following the due date for payment of such penalty, and, unless
67 dissolved by payment, shall, as of said date, be considered a tax
68 due and owing to the commonwealth, which may be collected
69 through the procedures provided for by chapter 62C. In addition
70 to the foregoing, no officer of any corporation which has failed to
71 pay any such penalty may incorporate or serve as an officer in any
72 corporation which did not have a legal existence as of the date
73 said penalty became due and owing to the commonwealth.

1 SECTION 15. Said chapter 149, as so appearing, is hereby
2 amended by striking out section 86 and inserting in place thereof
3 the following:—

4 Section 86. No person shall employ any minor under age 18
5 who is a full-time secondary school student unless said minor is at
6 least fourteen years of age and has obtained an employment
7 permit from the superintendent or school official designated by
8 the superintendent from the school as set forth in section 87. The
9 superintendent or school official designated in writing by the
10 superintendent may issue an employment permit to a minor at
11 least fourteen years of age and shall consider whether the welfare
12 of such minor will be appropriately served by the granting of such
13 a permit. Any permit issued hereunder may be revoked at any time
14 by any such superintendent or school official designated in
15 writing by the superintendent upon a finding made by him or her
16 that the welfare of the minor issued such permit is no longer being
17 appropriately served by the employment of such minor. No

18 employment permit shall be issued to any child under 16 to work
19 in, about or in connection with any manufacturing or mechanical
20 establishment, factory or workshop. Any person employing any
21 minor at least fourteen years of age who is a full-time secondary
22 student shall procure and keep on file, accessible to the supervi-
23 sors of attendance of the city or town, to agents of the department
24 of education and to representatives of the office of the attorney
25 general, the permit for employment issued to such minor here-
26 under and shall keep a complete list of the names and dates of
27 birth of all minors so employed. The superintendent may grant a
28 waiver to exempt from the hours restrictions in this chapter a stu-
29 dent who establishes an economic need; provided, however, that
30 the student's health, welfare, or academic performance would not
31 be detrimentally affected. Any minor over the age of sixteen who
32 asserts to an employer that the minor is not a full-time secondary
33 school student shall obtain from the superintendent or school offi-
34 cial designated by the superintendent in writing, written certifica-
35 tion of said minor's non-student status. Said certification must
36 include the employer's name and address and the duties to be per-
37 formed by the minor. Upon termination of the employment of a
38 minor the employer shall return the permit or certification of non-
39 student status within two days after said termination to the office
40 of the superintendent of schools from which it was issued. The
41 prohibitions against employment in hazardous occupations apply
42 to each minor as set forth in sections 60, 61, 62 and 63 regardless
43 of a minor's educational status.

1 SECTION 16. The first paragraph of section 87 of said chapter
2 149, as so appearing, is hereby amended by striking out the word
3 "sixteen", in line 11, inserting in place thereof the following
4 word:— eighteen.

1 SECTION 17. The second paragraph of said section 87 of said
2 chapter 149, as so appearing, is hereby further amended by
3 striking out clause (1) and inserting in place thereof the following
4 clause:—

5 (1) An application, obtained by the student from the school or
6 employer, which must be signed by an employer who has indi-
7 cated thereon the student's intended duties, the full name and

8 address of the employer and the location of the intended work.
9 Said application containing the employment information must
10 thereafter be signed by a parent or legal guardian of the student
11 prior to presentation of the application to the superintendent or
12 school official designated by the superintendent.

1 SECTION 18. The second paragraph of said section 87 of said
2 chapter 149, as so appearing, is hereby further amended by
3 striking out clause (3).

1 SECTION 19. Said section 87 of said chapter 149, as so
2 appearing, is hereby further amended by striking out the last para-
3 graph.

1 SECTION 20. Section 89 of said chapter 149, as so appearing,
2 is hereby amended by inserting after the words “It shall state the
3 name”, in line 13, the following words:— and address.

1 SECTION 21. Section 89 of said chapter 149, as so appearing,
2 is hereby further amended by striking the word “sixteen”, in lines
3 27-28, and inserting in place thereof the following word:— eigh-
4 teen.

1 SECTION 22. Section 89 of said chapter 149, as so appearing,
2 is hereby amended by striking out the words “department of labor
3 and industries”, in line 34, and inserting in place thereof the
4 following words:— attorney general.

1 SECTION 23. Said chapter 149, as so appearing, is hereby
2 amended by striking out section 90 and inserting in place thereof
3 the following:—

4 Section 90. Whoever employs a minor under eighteen, or who-
5 ever procures, or, having under his control a minor under eigh-
6 teen, permits the minor to be employed in violation of section
7 eighty-six, shall be punished by a fine of not less than two hun-
8 dred fifty dollars and not more than five hundred dollars or by
9 imprisonment for not more than one month; and whoever con-
10 tinues to employ a child under eighteen in violation of said
11 section, after being notified thereof by a supervisor of attendance

12 or by an inspector, shall for every day thereafter while such
13 employment continues be punished by a fine of one thousand dol-
14 lars or by imprisonment for not more than two months; and who-
15 ever forges, assists in forging, or procures to be forged a
16 certificate of birth or other evidence of the age of such minor, and
17 whoever presents or assists in presenting a forged certificate of
18 birth or evidence of birth to the superintendent of schools or to a
19 person authorized by law to issue permits, for the purpose of
20 fraudulently obtaining the employment permit required by section
21 eighty-six, shall be punished by a fine of not less than one thou-
22 sand nor more than three thousand dollars or by imprisonment for
23 not more than one year, or both. Whoever, being authorized to
24 sign an employment permit, knowingly certifies to any materially
25 false statement therein shall be punished by a fine of not less than
26 two hundred fifty dollars and not more than five hundred dollars.
27 Whoever, without authority, alters an employment permit after the
28 same is issued shall be punished by a fine of one hundred dollars.

1 SECTION 24. Said chapter 149, as so appearing, is hereby
2 amended by striking out section 95 and inserting in place thereof
3 the following section:—

4 Section 95. No minor under the age of 18 who is a full-time
5 secondary student shall be employed except as provided for pupils
6 in cooperative courses, unless the employer procures from said
7 minor and keeps on file a copy of an employment permit issued to
8 such minor under the provisions of section 86.

9 Every employer of such minor shall keep a copy of the minor's
10 employment permit accessible to any officer referred to in section
11 92 and shall return the permit within two days of the termination
12 of employment of such minor to the office of the superintendent
13 of school from which the permit was issued.

1 SECTION 25. Section 95A of said chapter 149, as so
2 appearing, is hereby amended by striking out the word "certifi-
3 cate", line 4, and inserting in place thereof the following words:—
4 employment permit.

1 SECTION 26. Chapter 149, as so appearing, is hereby amended
2 by striking out section 97 and inserting in its place the following
3 section:—

4 Section 97. Whoever employs a minor in violation of sections
5 95 or shall be punished by a fine of not more than 1,000 dollars.

1 SECTION 27. Chapter 741 of the Acts of 1965 is hereby
2 repealed.

1 SECTION 28. The commissioner of education shall report to
2 the joint committee on education, arts and humanities on or before
3 July 31, 2006 the costs of replicating and implementing programs
4 statewide that are funded pursuant to section 126 of chapter 149
5 of the acts of 2004, and the feasibility of using the foundation
6 budget formula to finance said programs, including any legislation
7 needed to provide alternative education.

1 SECTION 29. The department of education shall, no later than
2 December 31, 2005, develop and implement a comprehensive
3 strategy to provide assistance to school districts and schools to
4 help address the student dropout problem in public schools, partic-
5 ularly those within urban areas. In the development of the
6 strategy, the department shall engage public and private represen-
7 tatives who have an interest in the discussion. The strategy shall
8 build upon existing programs and initiatives that have proven suc-
9 cessful in preventing students from dropping out of school. The
10 department shall take into consideration, at a minimum, the
11 following:

12 (1) Analyses of annual district and school dropout data;
13 tracking of students; risk factor identification;

14 (2) Any local, state and federal resources and programs,
15 including, but not limited to, extended school services; literacy;
16 early intervention; family resource and youth service centers;
17 alternative education services; drug and alcohol prevention pro-
18 grams; school-to-career programs; school safety grants; criminal
19 justice programs; social service programs; and other relevant pro-
20 grams and services that could be used in a multi-dimensional
21 effort;

22 (3) Comprehensive student programs and services that include,
23 but are not limited to, identification, counseling, mentoring, extra
24 instructional support, tutoring and other educational strategies for
25 elementary, middle, and high school students who are demon-
26 strating little or no success in school, who have poor attendance,
27 or who possess other risk factors that contribute to the likelihood
28 of their dropping out of school, as well as home visitations, and
29 parental training for the parents or legal guardians of such stu-
30 dents; and

31 (4) Evaluation procedures to measure progress within school
32 districts and schools in eliminating the problem of students drop-
33 ping out of school.

34 The department, with assistance from such agencies as it deter-
35 mines necessary, shall provide technical assistance to districts
36 requesting assistance with dropout prevention strategies and the
37 development of district and school plans. Agencies or other public
38 entities that the department determines are necessary to assist in
39 this effort are hereby directed to provide such assistance.

40 The department shall file any comprehensive strategy devel-
41 oped under this section with the joint committee on education, arts
42 and humanities.